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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSHUA C. BROWN, Defendant and Appellant.	B213207 (Los Angeles County Super. Ct. No. BA301615)

APPEAL from a judgment of the Superior Court of Los Angeles County, William N. Sterling, Judge. Affirmed.

Meredith Fahn, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Joshua Brown appeals from a judgment after a jury trial in which he was convicted of two counts of dissuading a witness by force or threat (Pen. Code, § 136.1, subd. (c)(1)) and two counts of criminal threats (Pen. Code, § 422). Defendant contends the evidence is insufficient to support his conviction with respect to one of his two victims. We disagree. We modify the judgment to delete a fine improperly imposed and otherwise affirm.

PROCEDURAL BACKGROUND

Defendant was charged by amended information with one count of dissuading a witness by force or threat and one count of criminal threats against victim Laron Grant, and one count of each offense against victim Jacqueline Grant, Laron Grant's mother. Defendant pleaded not guilty and proceeded to jury trial, where he was found guilty as charged.

Defendant was sentenced to the low term of two years for dissuading Laron Grant by force or threat. He received a concurrent term for dissuading Jacqueline Grant. Low term concurrent sentences were imposed for the criminal threat convictions, and stayed pursuant to Penal Code section 654. Defendant received 279 days of presentence credit, and various fines were imposed. The minute order of the sentencing hearing and the abstract of judgment include a DNA penalty assessment fine of $80, although the trial court never actually imposed such a fine at sentencing. Defendant filed a timely notice of appeal.

Subsequently, defendant moved the trial court to amend the abstract of judgment to correct his presentence credits to 327 days, and to strike the DNA penalty assessment

fine. The trial court amended the presentence credits, but failed to address the DNA penalty assessment fine.[1]

FACTS

Defendant has two brothers, Julius and Dewon. In March 2006, Julius Brown was facing a preliminary hearing on a matter involving eight felony charges, arising out of an incident which had occurred in January of that year. One of the victims of that incident was Laron Grant, who was expected to testify at the preliminary hearing. Jacqueline Grant was also a witness to that incident; she saw the "crime scene" and heard "what would be called evidence."

At that time, Jacqueline Grant was living at the home of her eldest daughter, Nakisha. Several other Grant children, including Laron Grant, also lived in Nakisha Grant's home.

Ladonna Grant was another of Jacqueline Grant's children. At some point, defendant had dated Ladonna Grant. On March 27, 2006, the night before Julius Brown's preliminary hearing, an incident occurred in which Ladonna Grant was victimized. Ladonna Grant was robbed, beaten, and possibly stabbed. While the details of the incident were excluded at defendant's trial, two things are clear: (1) defendant's belongings, including his coat, wallet, and cellular telephone, were left in Ladonna

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[1] At the hearing, the trial court stated, "We are going to correct his custody credits," and ordered the credits corrected. The court then stated, "All right?" Defense counsel replied, "Thank you, your honor. That's it." It appears that both the trial court and defense counsel overlooked the fact that defendant's motion had also sought to strike the DNA penalty assessment fine.

Grant's car; and (2) the Grant family believed that defendant was at least partly responsible for what had happened to Ladonna Grant that night.

The next morning, at around 7:00 a.m., the family was preparing to go to court for the Julius Brown preliminary hearing. A phone call was made to the Grant home. Jacqueline Grant answered the call. Defendant introduced himself as Julius Brown's brother,[2] said that he had nothing to do with what had happened to Ladonna Grant, and asked that his belongings be returned. Jacqueline Grant told defendant that his belongings were going to be turned over to the police.[3] Defendant continued to claim non-involvement in the attack on Ladonna Grant, and argued with Jacqueline Grant. Jacqueline Grant became angry and began to panic. Nakisha Grant grabbed the telephone from her mother and took over the conversation.

Defendant and Nakisha Grant identified themselves to each other and the argument continued. Nakisha Grant screamed at defendant, calling him a liar, and telling him that he could not get his property back because it had been given to the police. Defendant became irate and irrational, and screamed at Nakisha Grant over the telephone. Defendant stated, "You guys are not going to give me my shit back? I'm Mad Swan Blood. We're going to make you do what it do, bitch." Mad Swan Bloods was defendant's gang. Defendant's latter statement was street slang for "we'll follow

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[2] Defendant used Julius Brown's gang moniker, rather than his name.

[3] The record is unclear as to whether defendant's belongings had already been given to the police.

through on our threats," and a warning to be prepared for combat. Nakisha Grant eventually hung up on defendant and joined her family in the truck to go to court.

Jacqueline Grant drove the truck; Nakisha Grant and Laron Grant were in the back seat. Laron Grant received a call on his cellular phone; he put the call on the speaker so everyone could hear. Defendant was the caller. He asked Laron Grant what he was doing; Laron Grant stated that he was on his way to court. Defendant asked if Laron Grant had to go; Laron Grant said that he did. Defendant then said, "If you go to court, we're going to blow your mama's house up." The call was on speaker when defendant made his threat. Nakisha Grant took over the conversation. There was yelling back and forth, and defendant repeated his threat, stating, "Well you guys are going to go to court? Well, all you guys need to fucking move because we're going to blow your fucking house up." Jacqueline Grant heard the threats coming out of the phone. Nakisha Grant also told Jacqueline Grant what defendant had said. Jacqueline Grant was frightened, as were Nakisha Grant and Laron Grant. The Grant family terminated the telephone call after the threats. They stopped answering the phone until they arrived at court.

The family was panicked by the time they arrived at court. Los Angeles Police Department Detective Gabriel Barboza interviewed the family about the threats. Both Laron Grant and Jacqueline Grant were too panicked to focus on his questions, and it took him quite some time to calm the Grants in order to get their statements.

Laron Grant testified at Julius Brown's preliminary hearing. His brother, Deron Grant, also testified. Subsequently, when the Grant family was still at the

courthouse, another telephone call came in on Laron Grant's phone; this time, the caller was defendant's youngest brother, Dewon Brown. Dewon Brown again threatened the family, saying to Nakisha Grant, "[Y]ou guys are really going to do my brother like this? Kisha, you know the business. I'm a Swan, when we catch you guys, be prepared." Detective Barboza had the family escorted home. They were then relocated for their safety.

ISSUES ON APPEAL

On appeal, defendant does not contest his conviction with respect to the counts pertaining to victim Laron Grant. However, he argues that the evidence is insufficient with respect to victim Jacqueline Grant. Specifically, he contends that the evidence is insufficient to support a conviction of criminal threats, because there is no evidence that he possessed the specific intent to threaten Jacqueline Grant. Similarly, he contends that the evidence is insufficient to support a conviction of dissuading a witness with respect to Jacqueline Grant, as there is no evidence that he had the specific intent to dissuade her from going to court. Finally, defendant challenges the imposition of the DNA penalty assessment fine.

DISCUSSION

1. *Standard of Review*

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty

beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 317-320.) The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) ' "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. ' "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." ' [Citations.]" ' [Citation.]" (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

2. *Sufficient Evidence of Criminal Threats*

Penal Code section 422 provides, in pertinent part, "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is

no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment . . . . "

Penal Code "[s]ection 422 does not require that a threat be personally communicated to the victim by the person who makes the threat. [Citation.] Nevertheless, we emphasize that the statute 'was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others.' [Citation.]" (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) "Accordingly, where the accused did not personally communicate a threat to the victim, it must be shown that he specifically intended that the threat be conveyed to the victim." (*Ibid.*) In determining whether the defendant intended that the threat be conveyed to the victim, we consider the circumstances surrounding the statement as well as the language of the threat itself. (*Id.* at p. 860.) We consider the relationship between the person told and the victim, as this may support an inference that the defendant intended the threat to be conveyed. (See *In re David L.* (1991) 234 Cal.App.3d 1655, 1659.) We also consider the setting in which the defendant made the statement. (*People v. Felix* (2001) 92 Cal.App.4th 905, 913.)

Defendant contends there is insufficient evidence that he intended his threat to be conveyed to Jacqueline Grant.[4] We disagree. Defendant threatened to blow up the house where the Grants lived. At one point, when talking to Laron Grant, defendant specifically referred to blowing up "your mama's house."[5] In short, defendant directly told Laron Grant that he would blow up Jacqueline Grant's home. It is impossible to believe that defendant told a son that he would blow up the son's mother's house without expecting the son to convey the threat to his mother. The same is true when defendant repeated his threat to Nakisha Grant. Defendant told Nakisha Grant that he would blow up the house where "all you guys" live. As defendant had recently spoken to both Jacqueline Grant and Nakisha Grant when he had called Grant home, he knew that Jacqueline Grant lived at the house. Defendant threatened the home of the entire Grant family; there was sufficient evidence to support the jury's conclusion that defendant intended his threat to be conveyed to the entire family, including Jacqueline Grant.

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[4] The parties dispute whether Jacqueline Grant heard defendant's threat over Laron Grant's cellular telephone. While we believe Jacqueline Grant's testimony is sufficient to support that inference, it is beside the point. There is no evidence that defendant knew that Jacqueline Grant was listening to the call he had placed to Laron Grant. Thus, the issue remains whether defendant *intended* that his threat be conveyed to Jacqueline Grant.

[5] On appeal, defendant suggests that the reference to "your mama" was simply "playing the dozens," a "form of cultural banter that has nothing to do with a person's actual mother." Defendant introduced no evidence of this purportedly innocent explanation for his threat at trial. In any event, a reasonable jury could certainly infer that, "If you go to court, we're going to blow your mama's house up" was not part of a jovial exchange of insults, but a serious threat to the family home.

3. *Sufficient Evidence of Dissuading a Witness*

Penal Code section 136.1, subdivision (a)(2) prohibits "[k]nowingly and maliciously attempt[ing] to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law." Where the act "is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person," the crime is a felony, punishable by up to four years in prison. (Pen. Code, § 136.1, subd. (c)(1).)

The crime of dissuading a witness is a specific intent crime. (*People v. Brenner* (1992) 5 Cal.App.4th 335, 339.) "Unless the defendant's acts or statements are intended to affect or influence a potential witness's or victim's testimony or acts, no crime has been committed under this section." (*People v. McDaniel* (1994) 22 Cal.App.4th 278, 284.) As with criminal threats, we consider the circumstances in which a statement is made, not just the statement itself, to determine whether a statement constitutes an attempt to dissuade a witness. (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1343.) However, "[a] threat need not actually deter or reach the witness because the offense is committed when the defendant makes the attempt to dissuade the witness." (*People v. Foster* (2007) 155 Cal.App.4th 331, 335.)

Defendant argues that the evidence is insufficient that he intended to dissuade Jacqueline Grant, in particular, from attending or giving evidence at the preliminary hearing. We disagree. Defendant did not specifically direct his threats only to Laron and Deron Grant, the two Grant family members who eventually testified at Julius

Brown's preliminary hearing. Instead, his threat was directed at the entire Grant family. Indeed, defendant stated to Nakisha Grant, "Well *you guys* are going to go to court? Well, *all you guys* need to fucking move because we're going to blow your fucking house up." (Emphasis added.) The evidence indicates that defendant threatened Nakisha Grant on behalf of *all* members of her family who were going to court and might give testimony against defendant's brother. As Jacqueline Grant had seen the Julius Brown crime scene and heard evidence, she was a potential witness against Julius Brown. It is inconceivable that defendant intended his threat to apply only to Laron and Deron Grant, and not every member of the Grant family who was going to court that day. Thus, there is sufficient evidence that defendant intended to dissuade Jacqueline Grant from attending court and possibly testifying.

3. *The DNA Penalty Assessment Fine*

Defendant argues the DNA penalty assessment fine must be stricken as the trial court never imposed it. The prosecution concedes the error. We will therefore modify the judgment to strike the fine.

DISPOSITION

The judgment is modified to strike the $80 DNA penalty assessment fine. As modified, the judgment is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.